

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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J.D., individually and on behalf of T.B., a child with a disability.

COMPLAINT

*Plaintiffs,*

Case No.

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

*Defendant.*

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J.D., individually and on behalf of T.B., a child with a disability, by and through her attorneys, CUDDY LAW FIRM, PLLC, for the complaint hereby alleges:

1. This is an action brought pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(3).
2. Plaintiffs J.D. and T.B. reside in the County of Kings, State of New York.
3. T.B. is a child with a disability as defined by IDEA, 20 U.S.C. § 1401 (3)(A).
4. J.D. is the parent of T.B. as defined by IDEA 20 U.S.C. § 1401(23).
5. Defendant New York City Department of Education is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19), and, as such, is obligated to provide educational and related programs and services to its students in compliance with the applicable federal and state statutes, regulations, and the U.S. Constitution, and is subject to the requirements of 20 U.S.C. § 1400 *et seq.*, and the regulations promulgated thereunder.

## JURISDICTION AND VENUE

6. Jurisdiction is predicated upon 28 U.S.C. § 1331, which provides the district courts with original jurisdiction over all civil actions arising under the laws of the United States, and upon the fee-shifting provision of IDEA, 20 U.S.C. § 1415(i)(3)(A), which provides that the district courts of the United States shall have jurisdiction of actions brought under section 1415(i)(3) without regard to the amount in controversy.

7. Venue is predicated upon 28 U.S.C. § 1391(b)(1) based upon the residence of the defendant.

## FACTUAL BACKGROUND

8. On September 12, 2017, plaintiff J.D. initiated an impartial due process hearing on behalf of her child T.B., alleging a denial of a free, appropriate public education (“FAPE”) and seeking various forms of relief.

9. This case was assigned Impartial Hearing Office Case Number 169511.

10. An impartial due process hearing was held for J.D. and T.B. on July 19, 2018.

11. On July 25, 2018, the impartial hearing officer issued a findings of fact and decision in favor of the parent, finding a denial of FAPE and awarding relief including one thousand one hundred forty (1140) hours of tutoring at a rate of one hundred twenty (\$120.00) dollars per hour, and requiring the Department of Education to pay the cost of an independent educational evaluation at a rate of four thousand five hundred dollars (\$4,500.00).

12. On November 16, 2018, plaintiff, through her counsel, submitted a demand for attorney's fees to defendant's Special Education Unit Office of General Counsel.

13. As of the date of this complaint, defendant has failed to settle the attorney's fees in this matter.

#### FIRST CAUSE OF ACTION

14. Plaintiffs repeat and reallege paragraphs 1 through 13 as if more fully set forth herein.

15. Plaintiff J.D. initiated an impartial hearing on behalf of T.B.

16. Plaintiff J.D. prevailed at the impartial hearing by way of the finding of facts and decision from the impartial hearing officer ordering the relief demanded by plaintiff J.D.

17. Plaintiff J.D. having prevailed in the underlying proceedings hereby demands reasonable attorney's fees and costs pursuant to 20 U.S.C. § 1415(i)(3).

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) Assume jurisdiction over this action;
- (2) Award to plaintiff J.D. the costs, expenses and attorney's fees for the administrative proceedings in the matter of T.B. pursuant to 20 U.S.C. § 1415;
- (3) Award to the plaintiffs the costs, expenses and attorney's fees of this action pursuant to 20 U.S.C. § 1415; and
- (4) Grant such other and further relief as the Court deems just and proper.

Dated: Auburn, New York  
April 1, 2019

Yours etc.,

s/ Kevin M. Mendillo  
CUDDY LAW FIRM, PLLC  
*Attorneys for Plaintiffs*  
5693 South Street Road  
Auburn, New York 13021  
(315) 370-2408  
kmendillo@cuddylawfirm.com